

Just admissions: South African universities and the question of racial preference

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Abstract

South African universities and other institutions of higher education currently give preference to student applicants from designated 'races'. This paper argues that such a policy is morally indefensible. Although the imperative to redress injustice is endorsed, this, it is argued, does not entail that applicants may be favoured on the basis of their (purported) 'race'. Nor can the pursuit of diversity be used to defend racial preference. Next, it is argued that any policy on racial preference must have both a racial taxonomy and a method of assigning individuals to different taxonomic categories. It is argued that both competing methods of categorizing individuals – one subjective and the other objective – are unacceptable. Finally, the paper highlights a number of fallacious responses to criticisms of racial preference.

Discussions on affirmative action become emotional very rapidly. This is entirely understandable. In places such as South Africa, where a long history of racial oppression has left many with deep scars, there is both anger about the damage and impatience to reverse it. Although these emotions are warranted, they can be impediments to determining whether or not affirmative action is a morally appropriate policy. Just as we insist that convicting people accused of crimes, and then sentencing them should be done by dispassionate tribunals, so we should insist that responses to racial injustice be evaluated in a dispassionate way. This is the most reliable way of ensuring that we do what *is* best rather than what *feels* best.

Affirmative action need not involve racial preference. Affirmative action programmes could consist in removing various obstacles to true equality of opportunity – including financial ones – without favouring people on the basis of their purported 'race'. However, such affirmative action programmes are not morally controversial. Instead, the concerns arise when some people are favoured on the basis of their belonging to a particular racial group. It is thus, this form of affirmative action that I shall discuss. My focus will be on admissions rather than appointments – that is, on student applicants rather than staff applicants.¹

THE RECTIFICATION ARGUMENT

Proponents of (racial preference) affirmative action in university and other higher education admissions policies often reason as follows:

1. Disproportionately few students at South African institutions of higher education are 'Black'.
2. This is because of South Africa's legacy of racial injustice.
3. We must redress injustice.
4. The only way this can be done is by favouring 'Blacks'.
5. Therefore, racial preference admissions policies are not only warranted but also required.

Although this argument, which I shall call the *rectification argument*, has widespread appeal, it is fallacious. It is important, however, to identify just where the flaws occur. Some proponents of the argument mistakenly think that all those who reject it deny one or more of the first three premises.

The first premise is obviously true. 'Blacks' are indeed a much smaller proportion of the overall South African student body than they are of the overall South African population. Some proponents of affirmative action belabour the figures. They seem to think that if only they could convince their opponents of these statistics, opponents of affirmative action would be forced to embrace the conclusion. However, here they ignore the fact that the first premise, true though it is, does not by itself entail the conclusion.

The second premise – that South Africa's legacy of racial injustice is what explains why there are disproportionately few 'Black' students at South African institutions of higher education – is ambiguous. Under one interpretation it too is obviously true. Had 'Blacks' not been denied the social, economic and educational benefits afforded to 'Whites', the student population would have been much more reflective of the country's population. It is also true that disadvantage along racial lines did not end with apartheid. This is because the relevant disadvantages are not easily overcome. Impoverished people with little or no access to adequate education do not suddenly overcome these disadvantages as soon as formal obstacles to equality are removed.

The second premise becomes contentious if one understands it to mean that the relevant legacy is *current* prejudice against 'Blacks'. On this view, 'Blacks' are being barred (or excluded) from tertiary educational institutions not because of their educational or financial disadvantage but because 'Whites' are blocking them. In saying that this is false, I do not mean to deny that racism still exists. Racial prejudice did not evaporate in 1994. However, the reason that disproportionately few 'Black' students are being admitted is not because those making admissions decisions are racist. If it were because they were racist, the solution would be to employ an admissions system in which applicants would be given application numbers, and admission decisions would be made on the basis of matriculation marks linked to that number rather than to a name or other identifying information that could reveal an

applicant's 'race'. However, we all know that disproportionately few 'Blacks' would be admitted under such a system. This is because it is the first interpretation of the second premise that is the correct one: that historical discrimination against 'Blacks' has led to disproportionately few 'Blacks' having attained the levels required for success at university.

Turning to the third premise – that we must redress injustice – it is noteworthy that some defenders of affirmative action uncharitably characterise their opponents as rejecting this premise. For this reason, it should be emphasized that the third premise is not in dispute. Both opponents and proponents of affirmative action can agree on the need for rectifying injustice. Where they disagree is on *how* this should be done. More specifically, they disagree on whether favouring people on the basis of their 'race' is the right way to rectify injustice. In other words, they disagree about the fourth premise – the claim that the only way to redress injustice is by favouring 'Blacks'. Opponents of the rectification argument reject the fourth premise, while defenders of the argument obviously accept it.

There are a number of points to make in connection with the fourth premise. The first of these is that not every injustice can be rectified. The paradigmatic example is murder. One can never undo an unjust killing and one can never compensate the victim. Of those injustices that can be rectified, even if only partially, very few can be rectified by means of university admissions, or at the university level more generally. For example, those who, as a result of injustice, are so undereducated that they could never succeed at university, even with appropriate support, cannot be compensated by admittance to a university. Indeed, admitting them may compound injustice by unreasonably raising expectations and setting people up for failure. The injustices suffered by such people must be compensated in other ways. Moreover, to prevent new generations also suffering such injustices, 'upstream' interventions, most obviously the provision of decent primary and second education, are required. Such attempts at redress are the responsibility of government rather than of universities (even though universities have responsibilities to assist government by, for example, training teachers). University admission policies can help rectify past injustice only in those cases where the applicants, although disadvantaged, have not been so badly disadvantaged as to have no reasonable chance of succeeding if admitted.

What is crucial at this juncture, however, is to realize that if one is trying to favour the moderately disadvantaged, then the relevant focus of one's affirmative action policy should be 'moderate disadvantage' rather than 'race'. The obvious and very common response here is to note the high correlation between disadvantage and ('Black') 'race'. The overwhelming majority of disadvantaged people (including the moderately disadvantaged) are 'Black'. Although that is true, 'race' remains a proxy for the relevant consideration – 'moderate disadvantage'. One of the problems with using the proxy is that it is less accurate than using that criterion for which it is a proxy. Instead of thinking about whether a given 'Black' is disadvantaged, one focuses only on the fact that he is 'Black'.

Some wish to argue that being 'Black' is in itself a disadvantage and not simply a proxy for disadvantage. According to this argument stereotypes of 'Blacks' as intellectually inferior become internalized and lead to lower levels of academic performance. I do not deny that such stereotypes exist. Nor do I deny that they can be damaging to those who are stereotyped – however, I deny that these facts do the argumentative work they are alleged to do. First, there are clearly some 'Blacks' who have not internalized such stereotypes. Like many 'Whites', they were appropriately nurtured by parents and good teachers, and they do well academically. As a result, they lack academic insecurities. It is simply incredible to think that all 'Blacks', especially in a post-Apartheid society, have this degree of insecurity. (If it were true, there would not be the clamour there is for academic advancement and development.) Second, those 'Black' children who do grow up thinking that they are not any good academically are not unlike some 'White' children who, for reasons other than racial stereotypes, might be led to the same belief about themselves. (Consider, for example, children who are dyslexic, or who suffer psychological abuse at the hands of cruel parents or teachers.) The proportion of 'Whites' suffering such insecurities may well be much lower than the proportion of 'Blacks', but it is simply not the case that all 'Blacks' and no 'Whites' fall into this category. Of course, those making admissions decisions are often unable to determine the presence and extent of such disadvantages, but it remains true that it is *disadvantage* rather than 'race' that is relevant.

Some defenders of 'race'-based affirmative action suspect that a focus on disadvantage rather than on 'race' will lead to even fewer 'Blacks' being admitted to universities. However, this is false. If appropriate measures of moderate disadvantage are used, we can expect, given the history and demographics of South Africa, that the overwhelming majority (but not all) of those favoured will be 'Black'. Thus, instead of substantially altering the number of 'Blacks' who will be admitted to university, an affirmative action policy that favoured the moderately disadvantaged would primarily influence *which* 'Blacks' are favoured. To understand the significance of this, it is important to note that at any given time, the number of places in a university is limited. Applicants, including those who will be admitted to a particular programme of study only if they are favoured in some way, are competing for these limited places. If the policy is to favour moderately disadvantaged students, then all the applicants who are admitted and who would not otherwise have been admitted, will be moderately disadvantaged. Almost all will be 'Black', but a few might be 'White'. By contrast, if the policy is to favour 'Blacks' then only some of those who would have been admitted under a policy favouring the moderately disadvantaged will be admitted, while the remaining places will go to 'Blacks' who are not disadvantaged (but whose grades are just below the threshold for the same reasons that some 'White' applicants' marks are below the threshold for acceptance). Defenders of racial preference affirmative action who say that they are interested in rectifying injustice need to explain why they prefer favouring advantaged 'Blacks' over moderately disadvantaged ones.

At this point, some might wish to defend the fourth premise by clarifying it. It might be suggested that while it is *in principle* possible to redress injustice by favouring the moderately disadvantaged, *in practice* a 'race'-based policy is the only way to alter the racial proportions. According to this argument, we simply do not have a reliable mechanism for determining who is moderately disadvantaged. Thus, there is 'no alternative' to the use of 'race' at the moment. This is not credible. It suggests either a lack or will or of imagination. The real test of whether there is an alternative would be to outlaw racial preferences. I suspect that very soon we would see in action the old adage that 'necessity is the mother of invention'. This is exactly what happened with the South African National Blood Services, which had maintained that there was no alternative to the use of 'race' as one proxy for HIV-tainted blood. Following governmental outrage in the wake of the exposure of this policy, alternatives were soon found (Bateman 2005).

In the case of university admissions one way of determining disadvantage would be to require somewhat lower scores from students at schools that are deemed to be disadvantaged. Such a policy might take into account the length of time an applicant spent at a given school, so as not to disadvantage students who for their final year or two managed to shift from a more to a less disadvantaged school, giving them insufficient opportunity to reap the full benefit of the better school.

In response to such a proposal, it is sometimes suggested that 'Blacks' in advantaged schools do worse than 'Whites' in the same schools, given other ways in which they are disadvantaged. This is not a good reason to prefer a racial preference affirmative action policy. First, if it is true that 'Blacks' in advantaged schools do not do as well as their 'White' peers, it is presumably true *on average*. Surely some 'Blacks' do as well as their 'White' classmates. There is no reason why *those* 'Blacks' should be favoured in admissions. Second, of those 'Blacks' who do not meet the 'White' average, some will not do so for the same reasons that some 'Whites' do not. That is to say, it will not be a lack of advantage, but some other deficiency. There is no reason why those 'Blacks' should be favoured either. Third, there may be some 'Blacks' in advantaged schools who, because of other disadvantages, do not do as well as 'White' students, but there are at least two things to say here. First, the school criterion could be coupled with other criteria, such as parental occupation or parental income. Second, any affirmative action policy has to choose whom to favour. And the choice here is whether the policy should favour those disadvantaged 'Blacks' who at least had some advantages, or whether it should favour those disadvantaged school pupils who lacked even those advantages. If one is interested in redressing disadvantage, one should favour the latter.

THE DIVERSITY ARGUMENT

Not all defenders of racial affirmative action justify it on the basis of redress. The major alternative is to appeal to the (purported) benefits of diversity. This justification, which we might call the *diversity argument*, is moot in the context of admissions (unlike

in the case of appointments) if, as I have suggested, employing a more direct test of disadvantage would not significantly diminish the number of 'Blacks' admitted, when compared with the number of 'Black' admissions under a system of racial affirmative action. Racial diversity would be advanced under both systems.

However, because I think that a *principled* shift away from racial preference affirmative action is better than a shift that is the consequence of a begrudging recognition that racial diversity will not be impacted, a few brief observations about diversity are in order. The aim here is to gesture at why racial preference admissions should be abandoned *even if*, contrary to fact, doing so would impact negatively on the racial diversity of the student body. I say 'gesture', because there is insufficient space here to provide a full refutation of the diversity argument for racial preference affirmative action.²

First, we need to be clear about what the relevant diversity is. If diversity itself were valuable, then we would need to pursue a more diverse diversity (including religions, ages, national origin, and so forth). Instead, defenders of affirmative action typically think that only some kinds of diversity should be pursued – most obviously racial and gender diversity, but sometimes also a kind of diversity that would increase the number of disabled students. I shall focus here on racial diversity because it is most germane in South Africa.

This brings us to a second point. Because it is very difficult to explain why racial diversity itself is important, defenders of racial preference affirmative action typically argue that racial diversity is important because it will advance some other valuable goals. For example, it is sometimes argued that racial diversity advances diversity of opinion, which in turn furthers the pursuit of truth, a central project of any university. The problem with this sort of argument, however, is that if one is interested in diversity of opinion, one would be better advised not to use race as a proxy, but to aim directly at diversity of opinion. I am not recommending opinion tests for admission to universities (any more than I am recommending 'race' tests), but merely pointing out the logical implications of the argument at hand.

Others claim that racial diversity improves the quality of the learning experience. The problem here, however, is that the studies that purportedly show this, suffer from various methodological flaws. For example, by asking subjects both how diverse their institutions are and how good the education is, they tell more about what the subjects think the correlation of their answers should be than what the actual correlation is. One study that controlled for this confounding variable found that diversity does not improve university education (Rothman, Lipset and Nevitte 2003).

Finally, it is worth mentioning that 'diversity' is not the same as 'proportionality'. The former term, common in arguments for affirmative action in the United States, where 'Blacks' are a minority, has been imported to South Africa without recognizing that even if the diversity argument did work, it would yield only the conclusion that there should be some 'Black' students. It would not yield the conclusion that the number of 'Black' students should be proportionate to the number of 'Blacks' in the South African population.

THE ABSURDITY OF RACIAL CLASSIFICATION

Defences of racial preference affirmative action ignore the elephant in the room. The elephant in question is not a 'white elephant' but instead the more common, grey kind: not everybody is either 'Black' or 'White' (even if we use 'Black' in its broader sense to include anybody who is not 'White'). Less cryptically, the problem is as follows: Any policy that aims to favour some people on the basis of their 'race' must not only have a racial taxonomy, but also a mechanism of assigning individuals to one of the taxonomic categories. Both of these are riddled with absurdities.

Any racial taxonomy is bizarre. South Africa's racial categories are 'African', 'Coloured', 'Indian' and 'White'. Sometimes 'Black' is used synonymously with 'African' and sometimes it is used as a more inclusive category that also spans 'Coloured' and 'Indian', an ambiguity which is often exploited. People who use these terms (without the scare quotes) rarely stop to think just how idiosyncratic (and idiotic) these categories are. Elsewhere, for example, anybody called either 'African' or 'Coloured' in South Africa would be called 'Coloured' or 'Black' or 'African-American' in other places or at other times in those other places. That should give pause to those who think that any of these categories are 'obvious'.

However, if we set aside that problem for the moment, we immediately confront another and arguably more difficult one – namely, how to assign individuals to particular racial categories. There are two broad options – self-categorization and categorization according to some standard independent of the views of the person being categorized.

During the apartheid era, the latter method was employed and was rightly ridiculed. Bizarre 'pencil tests' and other absurd methods of determining people's 'race' were employed. It is understandable that post-apartheid South Africa has shied away from such outrageous and demeaning methods of forcibly categorizing people, often against their will. Or so it seems. Nominally, South Africans are now free to classify themselves, but the understanding is that most of them will classify themselves in the way that they would have been classified by the apartheid regime. If that were not the case, and self-assignment were really the criterion, then it would be impossible for people to mis-categorize themselves. Any pale skin South African classifying himself as 'Black' would be 'Black'. In other words, if self-categorization is the criterion then anybody wanting to benefit from racial affirmative action need only classify himself as a member of the racial group that is favoured. Because this would not be tolerated, at least on a wide scale, we can see that there is, in fact, a surreptitious appeal to some more objective standard.

The problem, however, is that any such standard is both abhorrent and absurd. Confident classifiers might be happy to assign to racial categories people who they take to be 'obviously' either 'Black' or 'White', but even the classifiers should worry about the thousands of people in the racial spectrum who are racially ambiguous. Consider, for example, the child of a 'White' South African? By the standards of racial preference affirmative action, such a person is privileged. But what if the 'White' South African's wife – the child's mother – is a 'Black' Zimbabwean? Let's

imagine further that the child was reared abroad (because of the illegality of his parents' relationship under the apartheid legislation), where he was schooled at good institutions. Is he 'coloured' because he has one 'Black' parent and one 'White' parent? What if he rejects that classification and prefers to be called an 'African'? By apartheid-style categorizations, he would be ineligible for this categorization. If we defer to his self-classification, then we have abandoned a purportedly objective classification in favour of his self-identification, which opens the way for others to classify themselves as they see fit. In any event, it seems absurd, irrespective of how he is classified, that he be eligible for racial preference given the absence of any relevant disadvantage.

Consider, next, the case of North Africans. Are they 'Africans'? How could a North *African* not be an 'African'? But if they are 'Africans', what about non-African Arabs? How are we then to classify Turks and Iranians? How are Berbers to be classified? Are they 'African' because they are North African, or are at least some of them not 'African' on account of their partial resemblance to Europeans? Could it really make sense to determine whether a Berber is 'African' or not on the basis of his eye colour? Those who answer affirmatively must then explain whether two (genetic) siblings in any country could be of different races because they have different eye or skin colour.

These are just a few of the absurdities of race classification. The problem for the racial classifier is that if we were to line up all humans in order of skin colour, or hair texture, or facial appearance or whatever else is deemed relevant by the 'race' classifier, we would find a smooth and seamless continuity across these various spectra. We would not find the sort of discontinuities that enable confident classification of all people into distinct races.

Some defenders of racial affirmative action have responded to such challenges by denying that they are employing a biological notion of 'race'. Instead, they claim, they are using either a political notion, or a more complex cluster notion embodying many factors (Hall 2007). There are serious problems with this move. First, insofar as 'race' is being used in a sense that departs from the way it was used by the apartheid regime, the case for 'race' being a marker of who has been disadvantaged is weakened. People were discriminated against on the basis of purported biological categories. To then favouring people on the basis of some other, even if allied category, is to move further away from the rectification rationale (Benatar 2007). Second, even if one rejects this first point, it is simply not credible that South African universities are using, or could use 'race' in the purported complex senses. Those making admissions decisions simply do not know enough about applicants to determine what their 'race' is, if it is as complex a notion as some people claim (Benatar 2007).

No system of racial preference can work without some mechanism for assigning people to various racial groups. No legislation or regulations in South Africa make it clear how people are to be assigned. The expectation is that individuals will do the state's dirty work by classifying themselves in roughly the way the Apartheid regime did or (in the case of younger people and more recent immigrants) would have. In

other words, the current racial preference legislation expects individuals to do what the state refuses to do explicitly – namely, to classify them racially.

Because assigning individuals to racial categories is a *sine qua non* of any system of racial preference, defenders of such a system must determine how such assignments are to be made. If the criterion is self-assessment, then there can be no second-guessing anybody's self-classification: You are what you say you are. This implies that you are to be favoured by a policy of racial preference if and only if you say so (by saying you belong to the favoured 'race'). That is unacceptable. The alternative is that people are classified in terms of some purportedly objective criteria, but this involves not only the absurdities I have described but also the indignities of involuntarily being classified. This too is unacceptable.

HOW NOT TO DEFEND 'RACE'-BASED AFFIRMATIVE ACTION

The arguments against 'race'-based affirmative action are extremely compelling. Those committed to racial preference resort to any number of unsatisfactory responses to such arguments. Arguably, the crudest response, but also a very common one, is to resort to *ad hominem* attacks on critics of affirmative action, implying that they are either, at the very least insensitive or, at worst, racist. Other defenders of affirmative action keep repeating their assumptions – for example, that racial preference is essential to redress – without engaging with the arguments that question these assumptions. Another common move is to claim that arguments of the sort I have provided are 'decontextualized' (Hall 2007). Often the context that is purportedly ignored is not specified, but even when the context is said to be the long history of racial discrimination, it is usually not said how that undermines the argument against affirmative action. Indeed, given that arguments such as those I have advanced explicitly recognize the legacy of racism, it is very difficult to see how the arguments are thought to ignore the context. Thus, one way of advancing the claim that opponents of affirmative action ignore the context is by misconstruing these arguments. Thus, arguments against affirmative action are sometimes mischaracterized as arguments against the importance of redress, even though the real disagreement is about whether affirmative action is an appropriate method of redress.

The final refuge of those desperate to ward off arguments against affirmative action is to undermine the enterprise of logical reasoning itself. They eschew 'fixed sequential logic with irrefutable outcomes at each of its stages' and prefer to be free 'from the shackles' of an 'analytical prison' (Hall 2007). They sometimes question whether there is any such thing as truth anyway. What these people fail to realise is that in abandoning a rational enterprise, their own arguments become pointless. If our reasoning need not be constrained by logical principles, then we have an intellectual free-for-all, in which no argument for any view can be better or worse than any other. If there is no truth, then their own views about affirmative action are not true either. There is then simply no reason for us to pay the least bit of attention to them.

If, by contrast, defenders of racial affirmative action think that their arguments are worthy of consideration, they have to be willing to have their arguments rationally evaluated. When that happens, I have argued, these arguments are found wanting.

NOTES

- 1 Although preference on the basis of a person's sex is also controversial, I shall restrict my attention to racial preference because I take the case for sex-based affirmative action to be even weaker than the case for 'race'-based affirmative action. Moreover, in the case of admissions (unlike appointments) applicants are currently favoured on the basis of 'race' rather than sex.
- 2 I examine this and other arguments at much greater length in (Benatar, 2008).

REFERENCES

- Bateman, C. 2005. Blood service adjusts after 'racist' claims. *South African Medical Journal* 95:728–730.
- Benatar, D. 2007. Better ways to address issue of disadvantage. *The Star*, 30 April 2007:15.
- . 2008. Justice, diversity and racial preference: a critique of affirmative action. *The South African Law Journal* 125:274–306.
- Hall, M. 2007. Race against affirmative action. *The Star*, 24 April:15.
- Rothman, S., S. M. Lipset and N. Nevitte 2003. Does enrolment diversity improve university education? *International Journal of Public Opinion Research* 15:8–26.